

1506658 (Refugee) [2016] AATA 3810 (4 May 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1506658
COUNTRY OF REFERENCE:	Bangladesh
MEMBER:	Glen Cranwell
DATE:	4 May 2016
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal affirms the decision not to grant the applicant a protection visa.

Statement made on 04 May 2016 at 9:35am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 11 May 2015 to refuse to grant the applicant a protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Bangladesh, applied for the visa [in] August 2013. The delegate refused to grant the visa [in] May 2015.
3. The applicant appeared before the Tribunal on 3 May 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Bengali and English languages.

CONSIDERATION OF CLAIMS AND EVIDENCE

CIRCUMSTANCES PREVENTING THE GRANT OF THE VISA

4. Under s.65(1) of the Act, the Minister (or the Tribunal on review) must refuse to grant a visa if the grant is prevented by s.91WA. Section 91WA(1) requires the Minister to refuse to grant a protection visa to an applicant who provides a bogus document as evidence of their identity, nationality or citizenship, or has destroyed or disposed, or caused the destruction or disposal of, documentary evidence of their identity, nationality or citizenship. However, that requirement will not apply if the applicant has a reasonable explanation for the provision, destruction or disposal, and either provides relevant documentary evidence or has taken reasonable steps to provide such evidence: s.91WA(2). Section 91WA and the definition of 'bogus document' are extracted in the attachment to this decision. The provisions of s.91WA of the Act were introduced into the Act with effect from 18 April 2015 and apply to all applications currently before the Tribunal as at that date,¹ including this application.

MANDATORY CONSIDERATIONS

5. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal has taken account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and relevant country information assessments prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

IS THE GRANT OF THE VISA PREVENTED BY S.91WA?

6. *Did the applicant provide a bogus document as evidence of his identity?*
7. The first question to be determined in this regard is whether any documents provided or caused to be provided by the applicant are 'bogus documents' within the meaning of that term in s.5(1) of the Act.
8. The applicant provided the Department with a birth certificate as evidence of his identity. This birth certificate contains a date of issue [in] October 2008. The birth certificate was purportedly signed [in] May 2013.

¹ Section 2 of the *Migration Amendment (Protection and Other Measures) Act 2015*

9. On 26 April 2016, the applicant provided the Tribunal with another birth certificate as evidence of his identity. This birth certificate also contains a date of issue [in] October 2008, and was purportedly signed [in] May 2013. However, the signature on the certificate is different, and the certificate contains a border. The permanent address is also different.
10. At the hearing, the applicant confirmed he arrived in Australia [in] May 2013.
11. The Tribunal asked the applicant how the birth certificate provided to the Department was obtained. The applicant stated that the Department asked him to provide evidence of his identity. He called his mother, and she went to the local council office to obtain the birth certificate. There was a mistake in that the date of birth in words stated "[date]" rather than [date]. He noted that English is a second language in Bangladesh.
12. The Tribunal asked the applicant how the birth certificate provided to the Tribunal was obtained. The applicant stated that his lawyer pointed out the mistake in the first birth certificate. He called his mother again, and asked her to obtain another certificate making sure that all the details were correct. When asked when he obtained this certificate, the applicant stated that he obtained it 6-7 months ago. The applicant agreed that 6-7 months ago would be a date in 2015.
13. The Tribunal put to the applicant that both birth certificates were purportedly issued [in] October 2008 and signed [in] May 2013. The Tribunal put to the applicant that it was unlikely that the birth certificates would have been issued before his mother requested them, and over 4 years before they were signed.
14. The applicant stated that he was not 100% sure why the 2008 date appears. Birth certificates were transferred online in 2008.
15. The Tribunal asked the applicant if he knew whether his birth certificate was verifiable online. The applicant stated that it was online, and invited the Tribunal to verify it.
16. The Tribunal put the following information to the applicant using the procedure in s.424AA of the Act:
 - Prior to the hearing, the Tribunal attempted to verify his birth certificate using the online Birth Registration Information System (BRIS) of Bangladesh. There was no match for the personal identification number and date of birth displayed on the birth certificate.
17. The Tribunal explained that this information was relevant to the review because it might lead the Tribunal to conclude that the birth certificates provided by the applicant were bogus documents. If the Tribunal concluded that the applicant had provided one or more bogus documents as evidence of his identity, the Act would require it to refuse his application for a protection visa in the absence of a reasonable explanation for providing the bogus document. The Tribunal invited the applicant to comment, and advised that he was entitled to request further time to comment if he wished.
18. The applicant stated that he had a friend on the same boat who was refused a visa last week due to his birth certificate. The applicant called his mother and told her to go to the council office and make sure that everything was alright. She told him there was no need to worry.
19. The Tribunal put to the applicant that the birth certificate provided to the Tribunal on 26 April 2016 was also purportedly signed [in] May 2013, even though he said that his mother had only obtained that certificate 6 or 7 months ago. The Tribunal would have expected that certificate to have been signed on a date in 2015.

20. At this point in the hearing, the applicant produced a further (third) birth certificate. It shows a date of issue [in] October 2014, and was signed on the same day. It contains a different birth registration number, and is in a different format to the other certificates.
21. The Tribunal asked the applicant to explain the differences between this latest certificate and the other certificates. The applicant stated that it was hard to say. It is Bangladesh. It is hard to prove matters because they do not do anything properly.
22. The Tribunal invited the applicant to put forward a reasonable explanation in the event that it found one or more of the birth certificates to be bogus documents.
23. The applicant stated that one of the birth certificates was obtained at the local council office, and the other was obtained at the chairman's office. They are different offices. It is possible to obtain birth certificates without payment.
24. The Tribunal noted that there were 3 birth certificates, and the difference in issuing offices could at most account for the differences between 2 of them. The applicant stated that it is hard to say. In Bangladesh the character references from the chairman are more important than birth certificates. (The Tribunal notes that the applicant has provided a character reference from the chairman separately to his birth certificate.)
25. The Tribunal asked the applicant whether there was anything else he wished to mention on this issue. The applicant stated that he could ask his mother to get another birth certificate if required. He belongs to an opposition party, and the government often tries to prevent opposition members obtaining voter IDs.
26. The Tribunal declined the offer to obtain a further birth certificate, noting that it already had 3 different birth certificates. It also noted that on his version the government had given him 3 birth certificates, so it did not seem that this was the product of an attempt to prevent him getting a voter ID.
27. The representative submitted that the differences were due to certificates being issued by 2 different offices. It is not the applicant's fault if there government is corrupt. He referred to the delegate's decision which cites country information that genuine documents are often incorrect.
28. Following the hearing, the Tribunal attempted to verify the birth certificate provided by the applicant at the hearing using the online BRIS system. The Tribunal was able to locate a record relating to the applicant. The Tribunal accepts that the birth certificate provided by the applicant at the hearing is genuine.
29. The Tribunal finds that the birth certificate provided to the Department and the birth certificate provided to the Tribunal on 26 April 2016 were not issued by the authorities in Bangladesh for the following reasons:
 - Both of these birth certificates have the same personal identification number. The Tribunal was unable to verify the birth certificates online using the BRIS system, in circumstances where the applicant told the Tribunal that the certificates were available online and invited it so to verify. The Tribunal places significant weight on this factor.
 - Both of these birth certificates contain a date of issue [in] October 2008 but were purportedly signed [in] May 2013. The Tribunal does not accept the applicant's explanation that the 2008 date was the date that the certificates were transferred to the online system. As noted in the preceding point, these certificates do not appear on the online system. The Tribunal does not find it

plausible that there would be over a 4 year delay from when the certificates were issued to when they were signed, or that the certificates would have been issued before the applicant's mother requested them.

- The Tribunal does not accept that the birth certificate provided by the applicant on 26 April 2016 was obtained by his mother 6 or 7 months ago. If it was obtained 6 or 7 months ago, the Tribunal would have expected the certificate to have been signed in on a date in 2015, not [in] May 2013.
- While the Tribunal accepts that a genuine document could contain errors, and that English is a second language in Bangladesh, the fact remains that the applicant provided 2 birth certificates, both purportedly signed [in] May 2013. The documents contain different signatures. One certificate contains a border, the other does not. The applicant's permanent address is different on each certificate. The Tribunal would not expect documents issued by the same office on the same day to contain such differences. In particular, the Tribunal expects that all birth certificates issued by the same office on the same day would be consistent as to whether they contained a border or not.
- The Tribunal does not accept that the birth certificates differ due to being issued by the local council office as opposed to the chairperson's office. There are 3 different birth certificates, and the applicant's explanation only explains 2 sets of differences.

30. In these circumstances, the Tribunal finds that the first 2 birth certificates purport to have been, but were not, issued in respect of the applicant as contemplated by paragraph (a) of the definition of 'bogus document' and that such a documents are 'bogus documents' for the purposes of that definition in s.5(1) of the Act.

31. Does the applicant have a reasonable explanation for providing the bogus document?

32. The second question to be determined in relation to the application of s.91WA to this case is whether the applicant has a reasonable explanation for providing or causing to provide the bogus document.
33. At the hearing, the Tribunal invited the applicant to put forward a "reasonable explanation" in the event that it found the birth certificate to be a bogus document.
34. As outlined above, the applicant advanced a number of explanations. One was that there were differences between the documents because they were issued by 2 different offices. The Tribunal does not accept this explanation. As noted above, there are 3 different birth certificates, and the applicant's explanation only explains 2 sets of differences. This explanation also does not account for the Tribunal being unable to verify 2 of the 3 birth certificates using the online BRIS system.
35. Another explanation was that it was not his fault if the government is corrupt, or that things are not done properly in Bangladesh. The Tribunal does not accept this explanation. For the reasons set out above, the Tribunal has found that the birth certificate provided to the Department and the birth certificate provided to the Tribunal on 26 April 2016 were not issued by the authorities in Bangladesh. The necessary implication of this finding is the Bangladeshi authorities were not at fault.
36. The Tribunal considers that the most plausible explanation is that, as claimed by the applicant, his lawyer pointed out a mistake in the birth certificate provided to the Department,

namely that the date of birth in words referred to October rather than August. The applicant then tried to correct this mistake. However, because the birth certificate provided to the Department was not issued by the authorities in Bangladesh, the applicant would have to have had further recourse to document forgers in order to obtain the birth certificate provided to the Tribunal on 26 April 2016. The Tribunal finds accordingly, and therefore does not accept that it can be said that the provision of the bogus document was an “innocent, unintended or accidental matter”.²

37. The Tribunal notes that the finding in the preceding paragraph is supported by the applicant’s reluctance to provide what proved to be the genuine third birth certificate to the Tribunal. Despite it having been issued in 2014, and despite the applicant having provided another birth certificate to the Tribunal a week prior to the hearing, the applicant did not provide the third birth certificate until mid-way through the hearing, and then only after having been subjected to prolonged questioning by the Tribunal in respect of the first 2 birth certificates. It seems to the Tribunal that the applicant only did so as a last resort after the Tribunal cast sustained doubt about the authenticity of the birth certificate provided to the Department and his attempted correction of this certificate.
38. For completeness, the Tribunal does not accept that the bogus birth certificates can be explained as an attempt by the government to prevent the applicant from obtaining a voter ID. The applicant did not report any difficulty in obtaining birth certificates, which the Tribunal would have expected if the government was attempting to cause the applicant difficulty in proving his identity. Indeed, the applicant claims to have obtained multiple birth certificates without difficulty. In any event, the Tribunal has found the first 2 birth certificates were not issued by the Bangladeshi authorities.
39. The Tribunal finds that the applicant does not have a reasonable explanation for providing a bogus document. Accordingly, it is unnecessary for the Tribunal to address the issue of whether the applicant has provided documentary evidence of his identity, nationality or citizenship, or has taken reasonable steps to provide such evidence.
40. By way of summary, the Tribunal is satisfied that the applicant has presented a bogus birth certificate as evidence of his identity. However, the Tribunal is not satisfied that the applicant has a reasonable explanation for providing a bogus document to the Department. Accordingly, consistent with s.91WA of the Act, the Tribunal must affirm the decision to refuse to grant the applicant a protection visa.

DECISION

41. The Tribunal affirms the decision not to grant the applicant a protection visa.

Glen Cranwell
Member

²*Trevidi v Minister for Immigration and Border Protection* (2014) 141 ALD 252 at [32].

ATTACHMENT - Extract from *Migration Act 1958*

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

42.

43. **91WA Providing bogus documents or destroying identity documents**

44.

45. (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:

46. (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or

47. (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or

48. (ii) has caused such documentary evidence to be destroyed or disposed of.

49. (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:

50. (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and

51. (b) either:

52. (i) provides documentary evidence of his or her identity, nationality or citizenship; or

53. (ii) has taken reasonable steps to provide such evidence.

54. (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.